

## REMARKS

### Double Patenting

The examiner provisionally rejected Claims 1-12 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-12, respectively of copending Application No. 10/001,900.

Applicants will consider the timely filing of a terminal disclaimer in compliance with 37 C.F.R. 1.321 (c) or 1.321 (d) to overcome the rejection upon an indication of allowable claims.

To date, the examiner has not indicated that any of the claims are in condition for allowance, but has kindly indicated suggestions to help advance prosecution.

### 35 U.S.C §101

The examiner rejected Claims 1, 7 and 19 under 35 U.S.C. 101 as directed to non-statutory subject matter.

The examiner is referred to the office action for the complete text of the rejection.

With respect to Claims 1 and 7 the examiner argues that: **"The claims fail to provide a "useful result" because they can be read so broadly as to include statutory and nonstatutory subject matter."** Applicant disagrees. In each of these claims, the steps require "recording by the computer." As such the claims can only encompass statutory subject matter because the only encompass actions that can only be performed by a particular machine.

The examiner also argues that: **"In both cases the claims are conclusory and merely state the goal be achieved. (See preemption discussion)."** Applicant disagrees. The claims are not conclusory. Rather, the recite the positive, active steps needed to distinguish over the prior art, namely, recording by the computer, exchange ... of a creation unit basket of securities for a first fund ..., the shares in the first fund trading in a first country, and the creation unit basket of securities having a ... basis that is substantially the same as a ... basis for a second fund ... traded ... in a second, different country, and recording by the computer, delivery ... a number of shares in the second fund or in other securities to account for a cash amount owed ... ."

The claims provide a "concrete result" because the claims recite the steps of recording and in particular the steps of recording the number of shares in the second fund or other securities that account for cash to be exchanged. The examiner provides naked conclusion that the claims are: "... not substantially repeatable and they cannot substantially produce the same result again." The examiner's reasoning being faulty moreover does not support the examiner's conclusion. There is nothing in the feature of "recording by the computer exchange ..." that would lead to a reading that the step "... may not happen." As for the second limitation, this limitation is not dependent on an intended use/result, but rather is dependent on the first limitation of recording by the computer of exchange of a creation unit for shares in a first fund. The feature "to account for a cash amount owed between the agent and the market participant" is not an intended use but rather a recited standard against which the number of shares in the second fund or the other securities is measured.

The examiner however is improperly mixing bases for the rejection under 101 by arguing that: "(c) The claim is indefinite because the meaning of terms in the claim is unclear (e.g., substantially)." The term "substantially" as used in the claims is not a relative term that would render the claims indefinite, but rather is a term that expresses a degree of tolerance and is therefore proper.

The examiner argues that: "In the case of claim 7, (a) The only limitation (i.e., determine a number of shares in the second fund...." is dependent on an intended use/result (i.e., to account for a cash amount owed between an agent and a market participant....) but an intended use/result is neither guaranteed or required to occur, (b) The claim is indefinite because the meaning of terms in the claims are unclear (e.g., substantially)." Applicant disagrees because even in the instance where there is no cash owed, the computer still records that fact, namely that zero shares of the second fund or other securities were delivered.

The examiner argues that claim 1 is "(2) Not a proper method (i.e., process) claim." Claim 1 meets at least the first test as set out by the examiner, i.e., both of the steps are tied to another statutory class, a manufacture, by requiring recording by a computer, a particular apparatus. It also results in a transformation e.g., by the reasoning presented in *State Street* argued of record.

Unlike the situation in *Comiskey*, also relied on by the examiner, here the claims are tied to a particular machine, which was not the case in *Comiskey*.

The examiner also argues that: "Re Claim 1: At best, the method claim provides only a nominal recitation of another statutory class. As noted supra, a method claim is defined by the steps or acts performed. If that is

the case, the only steps performed by the claimed method are "recording...." and "recording " In other words, the claimed method is just storing data.." Applicant disagrees. Unlike the situation of mere descriptive material, the acts of recording and recording require the use of data that transform the state of the computer by the very acts of the recording. Implicitly, the data recited in the claim are used in the context of a calculation, to ascertain the "prescribed number of shares." These calculations are discussed in the specification, but inclusion of these calculations in the claims would unnecessarily narrow the scope of these claims because it would be easy for another system of another entity to perform this calculation and thus have infringers avoid direct infringement of the claims.

The examiner presents a principle that proscribes "Preemption." However the examiner has not explained how Applicant's claims preempt an idea, law of nature or natural phenomena. Clearly, the later two do not apply and the former, "idea," is inapplicable because of the presence of the computer.

The examiner also presents an argument of missing essential steps. The examiner argues: "For example, before any exchanging can occur one must identify how they are getting a prescribed number of shares, a creation unit etc. Also, essential steps are missing. For example, the steps in the dependent claims such as calculating the amount of cash needed to be exchanged relies on the step of calculating the net asset value of the first fund at the close of trading in the second country in which the second fund is trading having already occurred in the independent claim." Again, the examiner requires features that only serve to narrow the scope of the claims without the examiner having produced any prior art that would require Applicant to narrow the scope of these claims. For instance, the step of calculation of the net asset value, is clearly a conventional step, that might be performed on a different system by a different entity, and thus allow the infringer to easily avoid any direct infringement of the claim.

With respect to claim 7, the claimed invention recites a single limitation of instructions to "determine a second number of shares in the second fund...." This limitation is not "the goal to be achieved" as the examiner argues, but rather is a calculation performed by the invention as claimed in claim 7.

The remaining reasoning of the examiner was addressed above.

35 U.S.C §112

The examiner maintained the rejection of Claims 1-20 under 35 U.S.C. 112, second paragraph, as being indefinite.

Applicant notes that it is well settled that it is not necessary for the claims to recite every element needed for practical utilization of the claimed subject matter in order for a claim to be proper under 35 U.S.C. §112, second paragraph, *Bendix Corp. v. United States*, 600 F.2d 1364, 1369, 204 U.S.P.Q. 617, 621 (Court of Claims, 1979). It is not the role of the claims to enable one skilled in the art to reproduce the invention, but rather to define the legal metes and bounds of the invention. *In re Geoffe*, 526 F.2d 1393, 1397, 188 U.S.P.Q. 131, (CCPA, 1975). The claims need not provide all operating details but a method claim should recite a positive step. *In re Erlich*, 3 U.S.P.Q. 2d 1011 (Bd. Pat. App. & Int., 1986).

Applicants have set forth the subject matter of their invention, as required by 35 U.S.C. 112, second paragraph. Applicants note that the examiner has not found any prior art that would necessitate a narrowing of the scope of claim 1, as will be set forth *infra*.

One skilled in this art would be capable of appreciating the metes and bounds of this claim and to understand what Applicants consider to be their invention, which is what is required by 35 U.S.C. 112, second paragraph. Therefore, this rejection is improper and should be removed.

The examiner argues that "Claims 1, 7, 12, 16 and 19 are ... incomplete for omitting essential steps and omitting essential elements, such omission amounting to a gap between the steps and gap between the elements." Applicants disagree. The claims do not recite "conclusions," but recite a combination of features used in producing the shares in the product. The questions raised by the examiner, e.g., prescribed number of shares are addressed in the specification and are not specifically needed to distinguish over the prior art.

The examiner argues regarding claims 1, 7, 12, 18 and 23 that the claims make reference to "intended use/intended results without giving any life or meaning to these statements in the claims. Also, the claims recites language that is passive in the claim because it could be done but, does not have to be done ... ." Applicants disagree. Terms that the examiner has problems with for instance "to account for a cash amount owed " are clearly described in the specification and a calculation of that feature is not needed to

distinguish these claims over the prior art. However, these terms are not intended use language because they are part of a calculation needed to have the shares/creations units equate.

The examiner also argues that: **"In claims 1, 7, 12, 18 and 23, the dependent claims rely on certain steps and or elements that fail to occur in the independent claims (e.g., net asset value/value."** Applicants respond that it is not necessary for these claims to recite these "steps," in order for the claims to distinguish over the cited art. Moreover, these steps need not be performed by the actor that performs the underlying features of the independent claims.

The examiner argues that: **"In claim 1, the preamble is drawn to a method of producing a financial product but the claimed invention fails to accomplish that result. How is the financial product produced?"** The preamble of claim 1 is drawn to "A method of producing shares in a financial product." This is accomplished by the two recording steps.

The term "substantially" in claims 1, 7, 12, 16 and 19 is not a relative term that would render the claims indefinite, but rather is a term that expresses a degree of tolerance and is therefore proper. The term substantially is measured by, e.g., the degree of closeness for arbitration that is desired by the market. That is Applicant describes that ideally, the creation unit basis of each fund should be the same. "Substantially" allows for flexibility in that basis, as would be well-known by those skilled in the art of producing ETF's. For instance, many financial prospectuses often make allowance for minor variations in composition of index funds from the underlying index.

Claims 1, 3, 4, 6, 7, 10, 11, 12, 12, 16 and 19 recite the limitation "other securities". The examiner asks: **"What securities are these?"** Other securities, as disclosed in the specification, can be any other securities other than shares in the first fund and the second fund, which is already covered in the delivery of the second recording action.

The examiner also argues that: **"Claims 2 recites the limitation "the net asset value of the first fund, calculated at the close of trading in the second country". There is insufficient antecedent basis for these limitations in the claims."** Applicants contend that there is sufficient antecedent basis in claim 1, which recites second, different country for "second country" as recited in claim 2.

Regarding Claims 4, 10, 15 and 25, the features of "value," could be a value or net asset value, as appropriate.

The examiner also argues that: "Claims 2, 8,13,17 and 20 recite the limitation "the amount of cash needed to be exchanged". There is insufficient antecedent basis for this limitation in the claims. i.e., The cash amount referred to in the independent claims is the cash amount owed not, the cash amount needed.?" Claim 2, for instance, introduces calculating the amount of cash "needed" to be exchanged. That calculation indicates the amount of cash that is owned by the participant to the agent or by the agent to the participant as expressed in the last line of claim 2.

The examiner argues: "In claims 2, 8, 13, 17 and 20, the claims make reference to intended use/intended results without giving any life or meaning to these statements in the claims." Applicants disagree. Terms that the examiner has problems with for instance "to account for a cash amount owed " are clearly described in the specification and a calculation of that feature is not needed to distinguish these claims over the prior art.

### 35 U.S.C § 103

The examiner maintained the rejection of Claims 1-20 under 35 U.S.C. 103(a) as being unpatentable over Gastineau, US Pub. No. 2001/0025266 in view of "Exchange traded funds—the wave of the future ?," by Stuart M. Strauss.

The examiner argues that:

**Re Claim 1:** Gastineau discloses a method of producing shares in a financial product, which are that-is traded on a first marketplace, the method executed on a computer, the method comprising:

recording by the computer, exchange between a market participant and an agent of a creation unit basket of securities for a first fund for a prescribed number of shares in the first fund, the shares in the first fund trading in a first country~ and the creation unit basket of securities having a creation unit basis that is substantially the same basis as a creation unit basis for a second fund that is traded on a second marketplace in a second- different country (Gastineau, [0001] [0002] [0003] [0004]).

Gastineau fails to explicitly disclose a method comprising:

recording by the computer, delivery by either the agent or the market participant a number of shares in the second fund or in other securities to account for a cash amount owed between the agent and the market participant as a result of the exchange of the creation unit basket of securities for the shares in the first fund.

Strauss discloses the method comprising:

recording by the computer, delivery by either the agent or the market participant a number of shares in the second fund or in other securities to account for a cash amount owed between the agent and the market participant as a result of the exchange of the creation unit basket of securities for the shares in the first fund (Strauss, pgs. 1-3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Gastineau by adopting the teachings of Strauss to provide a method further comprising recording by the computer, delivery by either the agent or the market participant a number of shares in the

**second fund or in other securities to account for a cash amount owed between the agent and the market participant as a result of the exchange of the creation unit basket of securities for the shares in the first fund.**

**As suggested by Strauss one would have been motivated to ensure that shares are purchased at NAV.**

Claim 1 is neither described nor suggested by any combination of Gastineau and Strauss, because no combination of these references suggests at least the feature of “recording by a computer exchange ... of a creation unit basket of securities for a first fund ..., having a basis that is substantially the same ... basis as a creation unit basis for a second fund that is traded on a second marketplace in a second, different country.”

Claim 1 further distinguishes over the alleged combination of references because that combination taken with the knowledge of one of ordinary skill in this art neither describes nor suggests the feature of: “recording ... delivery by either the agent or the market participant a number of shares in the second fund or in other securities to account for a cash amount owed ... .

The examiner uses Gastineau to teach the feature of recording ... exchange. The examiner has not explicitly shown where Gastineau teaches the claimed exchange feature and in particular “a first fund ..., having a basis that is substantially the same basis as a creation unit basis for a second fund that is traded on a second marketplace in a second country.”

Gastineau describes a SPDR a depository trading receipt based on the S&P 500 Index. However, nowhere in those passages or elsewhere in Gastineau is there described both the first fund traded in the first country and the second fund traded in the second country.

That is, Gastineau does not have any suggestion of, e.g., a trust or a fund, in, e.g., Europe that is based on the S&P 500 (SPDR's) traded in the US, which in the context of claim 1, would be an example of the “first fund.” Gastineau merely provides teachings for the “second fund” in the context of claim 1.

Applicants specifically requested that the examiner identify the element of Gastineau that correspond to the first fund and the element in Gastineau that corresponds to “a second fund that is traded on a second marketplace in a second, different country.” To date the examiner has not done so.

Gastineau describes a hedging technique to produce a hedge basket of securities to hedge against trading of actively managed funds. However, the hedge basket does not possess the

features of a second fund trading in a second, different country than the actively managed first fund nor having a creation unit basket of securities for the first fund that has a basis that is the same or substantially the same as a creation unit basis for the second fund. The hedge basket is neither registered nor are shares thereof traded, nor does it have the same or substantially the same basis as the creation unit of the actively managed fund.

The examiner uses Strauss to teach the feature of recording ... delivery. However, Strauss neither describes nor suggests: "delivering by either the agent or the market participant a number of shares in the second fund or in other securities to account for a cash amount ... ."

Rather, Strauss describes the conventional approach in which cash is delivered to account for dividends etc. For instance, Strauss describes on page 2,

**A small cash payment (Cash Component) generally must also be made. The list of the names and number of shares of the Deposit Securities on a particular trading day is made available daily to market participants prior to the opening of trading by the trustee (in the case of a UIT), or investment advisor or custodian (in the case of a managed fund), typically through the facilities of the National Securities Clearing Corporation (NSCC).<sup>6</sup> The Cash Component is an amount equal to the Dividend Equivalent Payment (as defined below) plus or minus a balancing amount intended to insure that (consistent with Rule 22c-1 under the Investment Company Act of 1940) shares are purchased at NAV next calculated following receipt of the purchase order in proper form.<sup>7</sup> The Dividend Equivalent Payment is an amount intended to enable an ETF to make a distribution of dividends on the next payment date as if all of the ETF's portfolio securities had been held for the entire dividend period. (Footnotes omitted).**

Strauss neither describes nor suggests the first and the second funds traded in different first and second countries, nor does Strauss describe "delivering by either the agent or market participant a number of shares in the second fund or in other securities to account for a cash amount ... ."

While Applicants note that Strauss does describe delivering a prescribed number of shares in exchange for the creation unit basket of securities, this again is akin to the conventional teachings of Gastineau regarding, e.g., the SPDR's and thus does not cure the deficiencies in Gastineau. Nonetheless, Strauss also clearly describes on page 3 that cash is exchanged along with the shares exchanged for the creation unit basket of securities.

**Redemption proceeds include the Fund Securities plus cash in an amount equal to the difference between the NAV of the Shares being redeemed and the value of the Fund Securities.<sup>10</sup> If the value, however, of the Fund Securities is greater than**



**the NAV of the Shares, a cash payment equal to the differential must be paid to the ETF. (Footnotes omitted).**

Strauss does not describe or suggest “delivering by either the agent or the market participant a number of shares in the second fund or in other securities to account for a cash amount owed ...” and no combination of these references describes or suggests this feature.

The examiner previously commented on her opinion that “The idea that something (i.e., usually other than money) that is an equivalent or near equivalent (i.e., in value, use etc.) can be given as an alternative or replacement for something else.”<sup>1</sup>

The examiner argues that it would have been obvious in view of Gastineau and/or Strauss to use shares in the second fund, or in other securities, in lieu of cash to account for cash that may be exchanged.

Applicants contend that the examiner's reasoning is a conclusion not a reason. The conclusion is based on improper hindsight when looking at Applicants' claims because the primary reference relied on to teach the feature of exchange, namely Strauss, simply does not describe or suggest to use shares in the second fund, or other securities. Gastineau, as admitted by the examiner, does not even address this feature.

It is clear that Gastineau does not describe or suggest both the first fund and the second fund that is traded on a second marketplace in a second, different country. Strauss neither describes nor suggests the first fund and the second fund traded in a second different country. Applicants have described a mechanism that permits, e.g., trading of an S&P 500 Index fund, which is normally traded in the U.S. on the American Stock Exchange to trade a, e.g., European version of the S&P 500 Index fund, which while not necessarily fungible with the S&P 500 Index fund traded in the U.S. is arbitragable with the S&P 500 Index fund traded in the U.S.

The examiner has not shown any teachings from Gastineau or Strauss that suggests to one of ordinary skill in the art to deliver a number of shares in the second fund or in other securities to account for a cash amount owed. The prior art furnished by the examiner discloses just one fund in one country, so issues such as making shares in a first fund arbitragable with shares in a second fund in a second, different country are simply beyond the scope of what Gastineau, alone or in combination with Strauss, *could* suggest to one skilled in the art.

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<sup>1</sup> *Final Office Action* at pp. 20-21.

Claim 7 is allowable over Gastineau taken separately or in combination with Strauss for analogous reasons as those given in claim 1, namely that no combination of these references suggests a computer program product ... for administrating a first fund ... having a basis that is substantially the same basis as a creation unit basis for a second fund that is traded on a second marketplace in a second, different country, ... comprising instructions ... to determine a number of shares in the second fund or in other securities to account for a cash amount owed between an agent and a market participant ... .

The examiner has removed the prior reasoning regarding Intended Use as explicitly applied to claim 7:

Claim 12 is allowable over Gastineau and Strauss for analogous reasons given in claim 7.

Claims 2, 8 and 13 are allowable over Gastineau in view of Strauss for the reasons discussed in their base claims.

#### Claims 3 and 9

Claim 3, for example, is allowable over the combination of references since no combination of those references describes or suggests: "if the cash amount is a negative amount the agent issues shares in the second fund or provides shares in the other securities in lieu of the cash amount, and if the cash amount is a positive amount the agent accepts shares in the second fund or in other securities in lieu of the cash amount."

#### Claims 4, 10 and 14

Claim 4, for example, is allowable since no combination of the references suggests that the cash is exchanged to equate shares in the first fund with the creation unit basket plus or minus the shares in the second fund or in the other securities provided to cover the cash amount.

#### Claims 5, 6, 11 and 15

These claims are distinguished over Gastineau in view of Strauss since no combination suggests, for example, that the agent sets a maximum cash amount that it will give to or receive from the market participant (claim 5) or that transactions that exceed the maximum cash amount

will result in issuance or receipt of the shares in the second fund or in the other securities, rather than cash ... (claim 6).

There is no other option for the agent or the market participant but to exchange cash in the process of creation of SPDRs as disclosed by Strauss or the combined teachings of Gastineau and Strauss.

#### Claim 16

The examiner is referred to the office action for the reasons for rejection.

Claim 16 is allowable over Gastineau taken separately or in combination with Strauss for analogous reasons as those given in claims 1 and 7, namely that no combination of these references suggests a computer program product residing on a computer readable medium for administering a first exchange-traded fund, the computer program product comprising instructions ... to: ... the first exchange-traded fund produced by delivery from a market participant to an agent, in exchange for the prescribed number of shares in the first exchange-traded fund, of a creation unit basket of securities for the first exchange-traded fund having a basis that is substantially the same basis as a creation unit basis for a second exchange-trade fund that has shares traded on a second marketplace in a second country; determine a number of shares in the second exchange-traded fund or in other securities to satisfy an amount of cash that is owed between the agent and the market participant to allow for delivery of the shares in the second exchange-trade fund or in the other securities in lieu of the cash; ... .

#### Claims 17, 19, and 20

Claim 19 is allowable over Gastineau and Strauss for analogous reasons given in claim 16.

Claims 17 and 20 are allowable over Gastineau in view of Strauss for the reasons discussed in their base claims (16 and 19).

#### Claim 18

This claim is distinguished over Gastineau in view of Strauss since no combination suggests, for example, a computer program product residing on a computer readable medium, for

administering a first exchange-traded fund, the computer program product comprising instructions ... to calculate whether cash involved in transactions exceeds a maximum amount; and issue the second exchange-traded fund shares along with the prescribed number of shares in the first exchange-trade fund in lieu of the cash.

There is no other option for the agent or the market participant but to exchange cash in the process of creation of SPDR's as disclosed by Strauss or the combined teachings of Gastineau and Strauss.

The prior art made of record and not relied upon neither describes nor suggests Applicants' invention whether taken separately or in combination with the art of record.

#### Response to Arguments/Remarks

The examiner argues that: "The concept of exchange-traded funds was old and well-known at the time the invention was made. See citation *supra* for Gastineau." Applicant does not understand what this statement has to do with the claimed subject matter. While exchange traded funds were well-known the specific claimed features of recording ... exchange were not known prior to Applicant's.

The examiner argues that: "The concept of in-kind purchase and redemption with respect to exchange-traded funds was old and well-known at the time the invention was made. In exchange for a given creation unit for a fund, a number of shares plus/minus a cash component could be exchanged, such that the values exchanged are equal. Furthermore, it was old and well-known that this purchase and redemption occurred at net asset value. See citation *supra* for Strauss." Applicants again point out that this statement is not relevant to the claimed feature of recording ... delivery. Strauss merely describes exchange of cash. Nothing in Strauss suggested that instead of exchanging cash that one would exchange shares in the second fund or other securities.

The examiner argues that:

Applicant argues, that it is non-obvious that when the creation unit basis between the first fund and the second fund are the same (or nearly the same) and when the net asset value is taken at the same time, that shares in the second fund could also be used. It is noted that this is also obvious in light of the teachings of Gastineau and Strauss. This is also a type of in-kind exchange that old and well-known in fields related to bartering, trading and exchanges. The idea that something (i.e., usually other than money) that is an equivalent or near equivalent (i.e., in value, use etc.) can be given as an alternative or replacement for something else..

Applicants disagree and request that the examiner furnish documentary evidence that in the context of exchange traded funds that the feature "... a number of shares in the second fund or in other securities to account for a cash amount owed between the agent and the market participant ..." is old and well known, because this is not apparent from any of the cited art.

Applicant has requested this documentary support for each of Applicant's Replies to Office Action and the examiner has been unable or unwilling to satisfy that request.

Intended use

See discussion above and of record

Automation

See discussion of record

Hindsight

The examiner states:

**In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).**

Applicants requests that the examiner specifically point out where in the prior art the examiner finds the knowledge of "a first fund ... trading in a first country... having a creation unit basis that is substantially the same as a creation unit basis for a second fund that is traded on a second marketplace in a second, different country and ... delivery ... of shares in the second fund or in other securities to account for a cash amount owed ... .

These limitations are simply not present in either reference or in the alleged combination of these references.

Applicants submit that it is only after gleaned knowledge from applicants' claims and teachings that the examiner fashions an argument that these features are well-known. If these features were well-known, the examiner should be able to find them.

#### Documentary Evidence

The examiner disagrees with applicants' assertion that a rejection was made on the basis of Official Notice, and points to support in Strauss supra, as first noted in the office action 07/24/07, and the references made of record. Applicants contend that these citations do not provide the requested documentary support. Applicants conclude therefore that the documentary support does not exist.

As indicated in the Interview Summary previously submitted, Applicant thanks the examiner for taking the initiative. However, Applicant believes that the claims clearly and distinctly distinguish Applicant's invention over the prior art. The suggestions made by the examiner would appear to only lengthen and obfuscate Applicants' invention and indeed would narrow the scope thereof without the examiner having produced any prior art that would otherwise require Applicant to narrow the scope.

It is believed that all the rejections and/or objections raised by the examiner have been addressed.

In view of the foregoing remarks, applicants respectfully submit that the application is in condition for allowance and such action is respectfully requested at the examiner's earliest convenience.

All of the dependent claims are patentable for at least the reasons for which the claims on which they depend are patentable.

Canceled claims, if any, have been canceled without prejudice or disclaimer.

Any circumstance in which the applicants have (a) addressed certain comments of the examiner does not mean that the applicants concede other comments of the examiner, (b) made arguments for the patentability of some claims does not mean that there are not other good reasons for patentability of those claims and other claims, or (c) amended or canceled a claim does not mean that the applicant concedes any of the examiner's positions with respect to that claim or other claims.

Applicant : Steven M. Bloom et al.  
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No fee is due. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

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